

PROCEDURES FOR APPLYING FOR AN ALTERNATIVE OYSTER CULTURE PERMIT

April 17, 2013

Pursuant to Louisiana Revised Statute 56:431.2 and Louisiana Administrative Code 76:VII.535 any leaseholder holding a valid oyster lease of state water bottoms may apply to Louisiana Department of Wildlife and Fisheries (DWF) for a permit to engage in alternative oyster culture (AOC) activities on the leased area. The types of AOC activities that may be permitted are:

- On-bottom cages, racks, or bags;
- Off-bottom cages, racks, or bags, suspended by poles or floats;
- String or longline culture; or
- Any other AOC activity as approved in the permit.

Pre-Application. The AOC law and AOC regulations impose certain restrictions regarding the areas for which AOC Permits may be granted, as well as other limitations and requirements. Therefore, before applying for a permit, prospective applicants are encouraged to confirm the availability for permitting of the area for which they intend to apply. A prospective applicant may do so by contacting DWF:

In person at DWF's Oyster Lease Section, Suite 220, 2021 Lakeshore Drive, New Orleans, Louisiana 70122;

By telephone at 504-284-5277; or

By email at MManiscalco@wlf.la.gov.

The prospective applicant must provide its name and lease number. DWF will provide a standard oyster lease plat showing the lease boundary and the areas within the lease that are available for AOC permitting. This pre-application is not required, but will avoid unnecessary expense in the application process. Department maps showing coastal areas available and unavailable for AOC permitting may be viewed at the below listed web addresses.

http://gis.wlf.la.gov/Maps/AOC_Suitability_Maps.pdf

gis.wlf.la.gov/oystermapping/map.html

Application. To obtain an AOC Permit for lease areas available for permitting, an applicant must apply to DWF's Oyster Lease Section. The lessee must apply in person, or an agent with power of attorney to appear and act on the lessee's behalf must apply in person and provide a copy of the power of attorney. The applicant may contact DWF regarding the application in person or by telephone at 504-284-5277.

The applicant must submit an application form which must be filled out in its entirety. The applicant must also submit:

1. A plat(s) (hard copy and digital file) showing the oyster lease, proposed AOC Permit area, and proposed AOC activities, facilities, and equipment.
 - a. All corners of the lease and the proposed AOC Permit area shall be shown, referenced to geographic coordinates (latitude and longitude) or the Louisiana State Plane Coordinate System, South Zone, NAD83, Survey Feet.
 - b. All corners of the proposed facilities and equipment shall be shown, referenced to geographic coordinates (latitude and longitude) or the Louisiana State Plane Coordinate System, South Zone, NAD83, Survey Feet.
 - c. The plat shall be drawn in black ink on a standard oyster lease plat furnished by the Oyster Lease Section. The plat shall contain the applicant's name, lease number, and signature.
 - d. The exact acreage sought to be permitted shall be shown on the plat, calculated to the hundredth of an acre. However, for all other purposes pertaining to the permit, including the application for the permit, the acreage shall be rounded up to the next highest acre.
 - e. The application number shall be shown on all plats, as indicated on the original application.
 - f. The plat shall use standard signs and symbols.
 - g. The plat shall include or be accompanied by a plot plan and schematics clearly showing the nature, location, and physical extent of all AOC activities sought to be permitted, horizontally and vertically, and all facilities and equipment sought to be placed therein or used pursuant to the permit.
 - h. The proposed permit area shall be located and configured so as to avoid unreasonable interference with surface navigation, passage by water craft, and any other authorized public use. No fencing shall be allowed.
 - i. The plat shall be accompanied by a formatted ASCII file of the coordinates for each corner on the plat that complies with the Oyster Lease Section's geographic information system.
2. All other local, state, and federal permits necessary for the activity sought to be permitted, or documentation from the relevant agencies establishing that such permits are unnecessary, specifically including:
 - a. State coastal use permit (R.S. 49:214.30). This permit is under the jurisdiction of the Louisiana Department of Natural Resources / Office of Coastal Management (DNR). Further information can be obtained from DNR at (800) 267-4019 or <http://dnr.louisiana.gov/crm>. Application information is available at <http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=93>. The other permits listed below, and other permissions or approvals that may be needed for the project, will generally be identified through the coastal use permit application process.
 - b. Federal obstruction to navigation section 10 (33 U.S.C. §403) and section 9 (33 U.S.C. §401) permit. This permit is under the jurisdiction of the U.S. Army

Corps of Engineers. Application for this permit, if necessary, can be made jointly with the coastal use permit application. Further information can be obtained from the Corps at (504) 862-2766 or <http://www.mvn.usace.army.mil/ops/regulatory>. See

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/ObtainPermit.aspx> for more information.

- c. Clean Water Act section 404 fill permit (33 U.S.C. §1344). Application for this permit, if necessary, can be made jointly with the coastal use permit application. This permit is under the jurisdiction of the U.S. Army Corps of Engineers. Further information can be obtained from the Corps at (504) 862-2766 or <http://www.mvn.usace.army.mil/ops/regulatory>. See <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/ObtainPermit.aspx> for more information.
 - d. State water quality certification (33 U.S.C. §1341). This permit is under the jurisdiction of the Louisiana Department of Environmental Quality (DEQ). Necessity for this certification will be determined pursuant to the coastal use permit application process. Inquiries can be addressed to DEQ at (225) 219-3225 or jamie.phillippe@la.gov. See <http://www.deq.louisiana.gov/portal/DIVISIONS/WaterPermits/WaterQualityCertifications.aspx> for more information.
 - e. Any other permit or authorization that may be required by a state or federal agency for the AOC activity.
- 3. A cost estimate to remove and properly dispose of all equipment, facilities, and other items sought to be permitted. The cost estimate must be prepared by a contractor that has a valid Louisiana Commercial Contractor License for the classification of Heavy Construction or Coastal Restoration and Habitat Enhancement, and has no familial or business relationship with the applicant. A list of licensed contractors is available at www.lslbc.louisiana.gov/findcontractor.asp.
 - 4. Application fee of \$100.
 - 5. If the person signing the Application is acting under a power of attorney, a copy of the power of attorney.

Review of Application. DWF may require additional information. Upon receiving a complete application, including any required additional information, DWF will review the application and determine whether to grant the permit, grant it with modifications, or deny it. DWF will post notice of the application and a point of contact for comment on the Department website, and provide such notice by email to all persons who have requested such notification in writing, at least 15 days prior to acting on the application. No AOC Permit may be issued unless a reasonable investigation into the question of ownership is complete and, based on the findings, a determination is made that the State owns the water bottom to be covered by the permit.

Action on the Application. If DWF determines to grant the permit with modifications, the Department will discuss the application further with the applicant before issuance. If DWF determines to grant the permit, or if DWF and the applicant agree to issuance of a permit with modifications, the Department will issue the permit to the applicant at its address in the application, which the applicant must sign and return within 15 days of receiving the permit. If DWF determines to deny the permit, the Department will issue notice of the denial to the applicant at its address in the application.

Permit Restrictions and Requirements. DWF may issue AOC Permits in numbers, locations, sizes, and configurations specified by the Department, regardless of whether the permit as issued deviates from the application. In addition to statutory and regulatory restrictions and requirements, the permit may contain particular restrictions or requirements for:

1. Equipment and materials authorized or required to be used for AOC activities.
2. Marking, lighting, or warning devices authorized or required in relation to AOC activities.
3. Reporting information or data to enable the Department to monitor the activities under the permit or to study such activities and their results.
4. Surety bond in an amount to be determined by the department, commensurate with the anticipated cost to remove and properly dispose of all permitted equipment, facilities, and other items.

Requirements Upon Issuance of Permit. Upon issuance of the AOC Permit, the permittee shall pay the first annual permit fee, which is \$2 per acre or fraction of an acre, per year (or fraction of a year through December 31, for the first year), within 15 days of receiving the permit.

Also within 15 days of receiving the permit, the permittee shall post the surety bond in the amount determined by DWF in the permit, if any, in accordance with the directions of the Department.

Upon placing any equipment or materials on State water bottoms, and prior to engaging in permitted AOC activities, the permittee shall comply with any conditions imposed in the permit regarding marking, lighting, or warning devices, including at a minimum the following:

1. Marking, lighting, and warning devices for AOC activities shall, at a minimum, comply with United States Coast Guard regulations and requirements, and with all state and federal laws and regulations, as amended from time to time.
2. All areas where such equipment or materials are present on state water bottoms or in the water column shall be clearly marked.
3. The permittee shall place and maintain markers along the boundaries of the permit area, at intervals of 75 feet, between 3 and 12 feet above the water level.
4. The permittee shall place and maintain markers along the boundaries of the areas where AOC facilities or equipment are actually located, at intervals of 20 feet, between 3 and 12 feet above the water level.

5. The permittee shall place and maintain buoys conforming to United States Coast Guard markings at all corners of the permit area and the areas where AOC equipment or facilities are actually located, and midway between the corners if separated by more than 1000 feet.
6. Each buoy, each main cage, bag, or float, and each structure used for AOC activities shall contain an indelible and permanent tag that includes the AOC permit number.